

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

REV. AUGUSTUS SIMMONS ENOCH,)	
)	
Plaintiff)	Case No. 1:19-cv-00026 (Erie)
)	
vs.)	
)	
DAVID PERRY, J. SAWTELLER,)	RICHARD A. LANZILLO
LISA LAMOREAUX, SUTTERLANDER,)	UNITED STATES MAGISTRATE JUDGE
DEPUTY SECRETARY TREVOR)	
WINGARD, TRACY SMITH,)	
REV. ULRICH KLEMM, DEBRA RAND,)	
DAN LEE, ROBERT LAWRENCE MAXA,)	ORDER ON PLAINTIFF'S SECOND
KIMBERLY SMITH, GARY PRINKEY,)	MOTION FOR INDEPENDENT
KATHLEEN HILL, BONNE E. BELL,)	PHYSICAL EXAMINATION
ANDREW LESLIE, HEATHER)	ECF NO. 106
KELLERMAN, CHAPPLON REV.)	
SHAFFER, CHAPPLON REV. SIBANDA,)	
)	
Defendants)	

Plaintiff Augustus Simmons (Simmons) has moved the Court to order an “independent medical examination.” ECF No. 106. The Court construes this motion as being brought under Federal Rule of Civil Procedure 35. So construed, the motion is DENIED.

The Rule provides that

the court where the action is pending may order a party whose mental or physical condition--including blood group--is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

Fed. R. Civ. P. 35(a). By its terms, Rule 35 allows examination of a party upon another party's request if relevant to the claims of any party. *See Perez v. Krugger*, 2015 WL 1472132, at *2 (W.D.N.Y. Mar. 31, 2015) (citing Baicker–McKee, Janssen, Corr, FEDERAL CIVIL RULES HANDBOOK 2015 (Thompson Reuters) at 924 (“Any party is subject to examination [pursuant to Rule 35] upon

motion by any other party"); *Schlagenhauf v. Holder*, 379 U.S. 104, 114–16, 85 S. Ct. 234, 13 L. Ed. 2d 152 (1964)). Thus, although Rule 35 permits an examination of any party, it is available to a party *other than* the party to be examined. Accordingly, Rule 35 is not available as a device to obtain, as Simmons requests, an examination of himself. *Id.* Further, Rule 35 “does not vest the court with authority to appoint an expert to examine a party wishing an examination of himself.” *Johnson v. Bumgardner*, 2013 WL 1187016, at *2 (D.S.C. Mar. 20, 2013) (quoting *Brown v. United States*, 74 Fed. Appx. 611, 614 (7th Cir. 2003)).

Simmons motion is therefore DENIED.

Entered and ordered this 12th day of August, 2020.

A handwritten signature in black ink, appearing to read "R. Lanzillo", written in a cursive style.

RICHARD A. LANZILLO
United States Magistrate Judge